

(ii) Section 212(a)(2)(A)(i)(II) (controlled substance, except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana);

(iii) Section 212(a)(2)(B) (multiple criminal convictions);

(iv) Section 212(a)(2)(C) (controlled substance traffickers);

(v) Section 212(a)(3) (security and related grounds); and

(vi) Section 212(a)(4) (public charge) except for an alien who is or was an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act). If a LIFE Legalization applicant is determined to be inadmissible under section 212(a)(4) of the Act, he or she may still be admissible under the Special Rule described under paragraph (d)(3) of this section.

(d)(1) In determining whether an alien is “likely to become a public charge”, financial responsibility of the alien is to be established by examining the totality of the alien’s circumstance at the time of his or her application for adjustment. The existence or absence of a particular factor should never be the sole criteria for determining if an alien is likely to become a public charge. The determination of financial responsibility should be a prospective evaluation based on the alien’s age, health, family status, assets, resources, education and skills.

(2) An alien who has a consistent employment history that shows the ability to support himself or herself even though his or her income may be below the poverty level is not excludable under paragraph (c)(2)(vi) of this section. The alien’s employment history need not be continuous in that it is uninterrupted. In applying the Special Rule, the Service will take into account an alien’s employment history in the United States to include, but not be limited to, employment prior to and immediately following the enactment of IRCA on November 6, 1986. However, the Service will take into account that an alien may not have consistent employment history due to the fact that an eligible alien was in an unlawful status and was not authorized to work. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision.

The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor. It is not necessary to file a waiver in order to apply the Special Rule for determination of public charge.

(3) In order to establish that an alien is not inadmissible under paragraph (c)(2)(vi) of this section, an alien may file as much evidence available to him or her establishing that the alien is not likely to become a public charge. An alien may have filed on his or her behalf a Form I-134, Affidavit of Support. The failure to submit Form I-134 shall not constitute an adverse factor.

(e) *Public cash assistance and criminal history verification.* Declarations by an alien that he or she has not been the recipient of public cash assistance and/or has not had a criminal record are subject to a verification by the Service. The alien must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for proper adjudication may result in denial of the application.

[66 FR 29673, June 1, 2001, as amended at 67 FR 38351, June 4, 2002]

§ 245a.19 Interviews.

(a) All aliens filing applications for adjustment of status with the Service under this section must be personally interviewed, except that the adjudicative interview may be waived for a child under the age of 14, or when it is impractical because of the health or advanced age of the applicant. Applicants will be interviewed by an immigration officer as determined by the Director of the Missouri Service Center. An applicant failing to appear for the scheduled interview may, for good cause, be afforded another interview. Where an applicant fails to appear for two scheduled interviews, his or her application shall be denied for lack of prosecution. Applications for LIFE Legalization adjustment may be denied without interview if the applicant is determined to be statutorily ineligible.

(b) At the time of the interview, wherever possible, original documents

must be submitted except the following: official government records; employment or employment-related records maintained by employers, unions, or collective bargaining organizations; medical records; school records maintained by a school or school board; or other records maintained by a party other than the applicant. Copies of records maintained by parties other than the applicant which are submitted in evidence must be certified as true and correct by such parties and must bear their seal or signature or the signature and title of persons authorized to act in their behalf.

(c) If at the time of the interview the return of original documents is desired by the applicant, they must be accompanied by notarized copies or copies certified true and correct by the alien's representative. At the discretion of the district director, original documents, even if accompanied by certified copies, may be temporarily retained for forensic examination by the Service.

§ 245a.20 Decisions, appeals, motions, and certifications.

(a) *Decisions*—(1) *Approval of applications*. If the Service approves the application for adjustment of status under LIFE Legalization, the district director shall record the alien's lawful admission for permanent residence as of the date of such approval and notify the alien accordingly. The district director shall also advise the alien regarding the delivery of his or her Form I-551, Permanent Resident Card, and of the process for obtaining temporary evidence of alien registration. If the alien has previously been issued a final order of exclusion, deportation, or removal, such order shall be deemed canceled as of the date of the district director's approval of the application for adjustment of status. If the alien had been in exclusion, deportation, or removal proceedings that were administratively closed, such proceedings shall be deemed terminated as of the date of approval of the application for adjustment of status by the district director.

(2) *Denials*. The alien shall be notified in writing of the decision of denial and of the reason(s) therefore. An applicant affected under this part by an adverse decision is entitled to file an appeal on

Form I-290B Notice of Appeal to the Administrative Appeals Office (AAO), with the required fee specified in 8 CFR 103.7(b)(1). Renewal of employment authorization issued pursuant to 8 CFR 245a.13 will be granted until a final decision has been rendered on appeal or until the end of the appeal period if no appeal is filed. After exhaustion of an appeal, an alien who believes that the grounds for denial have been overcome may submit another application with fee, provided that the application is submitted on or before June 4, 2003.

(b) *Appeals process*. An adverse decision under this part may be appealed to the Associate Commissioner, Examinations, Administrative Appeals Office (AAO), who is the appellate authority designated in §103.1(f)(3) of this chapter. Any appeal shall be submitted to the Service office that rendered the decision with the required fee.

(1) If an appeal is filed from within the United States, it must be received by the Service within 30 calendar days after service of the Notice of Denial (NOD) in accordance with the procedures of §103.3(a) of this chapter. An appeal received after the 30 day period has tolled will not be accepted. The 30 day period for submitting an appeal begins 3 days after the NOD is mailed. If a review of the Record of Proceeding (ROP) is requested by the alien or his or her legal representative, and an appeal has been properly filed, an additional 30 days will be allowed for this review from the time the ROP is photocopied and mailed.

(2) If an applicant's last known address of record was outside the United States, and the NOD was mailed to that foreign address, the appeal must be received by the Service within 60 calendar days after service of the NOD in accordance with the procedures of §103.3(a) of this chapter. An appeal received after the 60 day period has tolled will not be accepted. The 60-day period for submitting an appeal begins 3 days after the NOD is mailed.

(c) *Motions*. The Service director who denied the application may reopen and reconsider any adverse decision *sua sponte*. When an appeal to the AAO has been filed, the director may issue a new decision that will grant the benefit